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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Charles N. Kelber
Dr. Peter S. Lam

'94 FEB 18 P2:09

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In the Matter of	Docket No. 030-31765-EA
ONCOLOGY SERVICES CORPORATION	EA 93-006
(Order Suspending Byproduct Material License No. 37-28540-01)	ASLBP No. 93-674-03-EA
	February 18, 1994

NOTICE
(Forwarding Document for
Docketing and Service)

The members of the Board recently received the correspondence attached to this notice from counsel for licensee Oncology Services Corporation (OSC). In accordance with 10 C.F.R. § 2.780(c), we request that the Office of the Secretary docket this document and serve it along with this notice.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

February 18, 1994

DS02

ONCOLOGY SERVICES CORPORATION
2171 Sandy Drive · State College, PA · 16803 814-238-0375 · Fax: 814-238-8069

(412) 463-3570 February 10, 1994

VIA TELECOPY: 215-337-5131

Barry R. Letts, Director
Office of Investigations
U.S. Nuclear Regulatory Commission - Region I
475 Allendale Road
King of Prussia, PA 19406-1415

Re: OI OSC Investigation

Dear Mr. Letts:

It is my understanding that you have been advised by the NRC's FOIA Office of the decision of the U.S. District Court for the Western District of Pennsylvania which ruled that your office is improperly withholding in excess of 5,000 pages of documents relative to the above. Those documents should be placed in the Public Document Room immediately.

With respect to the complaint that was made to your office regarding the improper questioning of Mr. Alex Kennan by the investigator assigned to this matter, there has been no response forthcoming from your office. I assume you have had this complaint fully investigated. Please advise me of the details and outcome.

Very truly yours,

Marcy L. Colkitt

General Counsel

MLC/sjg

cc: G. Paul Bollwerk, III, Esquire
Dr. Charles N. Kelber
Dr. Peter S. Lam
Marian L. Zobler, Esquire

A copy of the decision in OSC v. NRC is enclosed for each individual copied herein.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ONCOLOGY SERVICES CORPORATION,	)	
Plaintiff,	)	
vs.	)	Civil Action No. 93-0939
UNITED STATES NUCLEAR REGULATORY COMMISSION and RUSSELL POWELL, FOIA OFFICER,	)	
Defendants.	)	

OPINION

February 7, 1994

On September 24, 1993, Oncology Services Corporation, ("Oncology") filed its First Amended Complaint under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, requesting this Court enjoin the United States Nuclear Regulatory Commission ("NRC") and Mr. Russell Powell, its FOIA officer, from "improperly withholding from public disclosure certain records which are within their possession and control." Amended Complaint, ¶ 1.

Oncology is a healthcare corporation licensed by the NRC to use radioactive by-product material in certain medical procedures. On November 2, 1992, a nursing home patient died five days after receiving a medical brachytherapy treatment using radioactive material at Oncology's facility in Indiana, Pennsylvania, which, the NRC asserts, followed "significant overexposure to radiation from a source lodged in the patient's

catheter." Government's Memorandum in Support of Motion to Dismiss, at 1.

The NRC immediately began an investigation of this incident which "in the NRC staff's view, indicated a significant breakdown of corporate and managerial control of license activities." Id., at 1-2. Oncology requested under the FOIA and was denied access to transcripts of all interviews made by the NRC's Incident Investigation Team regarding the Indiana, Pennsylvania, accident. Amended Complaint, ¶ 3. Defendant NRC eventually released portions of two of the requested interview transcripts but redacted certain material therein it deemed exempt from disclosure pursuant to Exemptions 6 and 7(C) of the FOIA, 5 U.S.C. §§ 552(b)(6) and 552(b)(7)(C); access to the remainder of the requested transcripts (some 5,000 pages of interviews) was denied under Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). Amended Complaint, ¶¶ 5, 7-8.

On January 20, 1993, the NRC suspended Oncology's license to conduct the aforementioned medical treatments. Affidavit of Barry R. Letts, NRC Region I Field Office Director in the Office of Investigations, at ¶ 3, attached to Memorandum of Law in Support of Government's Motion for Summary Judgment (Document No. 19). As a result of this license suspension order, an administrative proceeding was commenced, Oncology Services Corporation, CLI-93-17, 38 NRC 44 (1993), which has been stayed pending completion of the ongoing NRC investigation. Id.

This Court directed the NRC to "file a response to said amended complaint in the form of a motion for summary judgment which shall have appended thereto a Vaughn Index. Patterson v. FBI, 893 F.2d 595, 598 (3d Cir. 1990), citing Vaughn v. Rosen, 157 U.S. Appeal D.C. 484 F.2d 820 (D.C. Cir. 1973), cert. denied 415 U.S. 977 (1974)." Order of Court, August 27, 1993, ¶ 2.[1] The Government's Motion for Summary Judgment (Document No. 18) was filed on November 22, 1993, with a memorandum of law in support attaching the affidavit of Barry R. Letts, the Director in the NRC Region I Office of Investigations responsible for overseeing the processing of FOIA requests. Also attached to the NRC's memorandum is what purports to be a Vaughn Index. Memorandum in Support of Summary Judgment, Government's Exhibit 4.

The NRC's so-called Vaughn Index itemizes two specific documents and one category of documents: (i) A-1, consisting of 20 pages of a transcript of an interview of an unidentified individual on December 22, 1992, with all other portions of that interview withheld on the grounds that release of the

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1. A Vaughn Index consists of a detailed affidavit which supplies an index of withheld documents and details the agency's justification for claiming exemption from the FOIA, the purpose of which is to "permit the court system effectively and efficiently to evaluate the factual nature of disputed information." John Doe Agency v. John Doe Corp., 493 U.S. 146, 148 n. 2 (1989); Patterson, 893 F.2d at 599 n. 7. An adequate Vaughn Index will narrow the scope of the Court's inquiry, contribute to informed court evaluation of disputed documents, assist appellate review, and enhance the requester's ability to argue effectively against nondisclosure. Coastal States Gas Corp. v. DOE, 644 F. 2d 969, 972 (3d Cir. 1981).

information could reasonably be expected to constitute an unwarranted invasion of that individual's privacy under Exemptions 6 and 7(C), 5 U.S.C. § 522(b)(6) and (b)(7)(C); (ii) A-2, 28 pages of an interview with an unidentified individual conducted on December 31, 1992, with the same claim of exemption asserted for the remainder of that interview; and (iii) B-1, transcripts of interviews with many individuals identified as former and current employees of Oncology numbering approximately 5,000 pages, were withheld in their entirety pursuant to Exemption 7(A), 5 U.S.C. § 522(b)7(A), for the following reason: "Information compiled during course of investigation for law enforcement purposes. Release of this information could reasonably be expected to interfere with an ongoing NRC investigation." Letts Affidavit, Government Exhibit 4. Mr. Letts' affidavit elaborates somewhat on NRC's reason for withholding 5,000 pages of interview testimony in its entirety, as follows:

> 9. . . . As previously described, there is a current NRC administrative proceeding which has been stayed by the Commission. The NRC is continuing to evaluate the viability of prospective proceedings of a civil, criminal and/or regulatory nature as a result of the current investigation. These transcripts contain information, such as names of individuals involved in the investigation and the actions, procedures and practices employed by plaintiff in its operations, that if released would have a detrimental effect on the ability of the NRC to continue and complete its investigation. In particular, release of document B-1 would reasonably be expected to interfere with law enforcement proceedings in the following particulars: 1) notify plaintiff of the direction of the Government's investigation; 2) permit witness intimidation; 3) permit the suppression or fabrication of evidence; 4) deter future witness cooperation; 5) hinder the Government's ability to

control and shape its litigation; and 6) prematurely reveal case evidence and strategy. As a result, the NRC's ongoing investigation would be adversely affected.

Pending before the Court are the Government's Motion for Summary Judgment (Document No. 18), Plaintiff's Motion for Summary Judgment (Document No. 22), and Plaintiff's Motion and Brief to Compel Production of a Vaughn Index and for Sanctions (Document No. 24). The parties agree that there is no genuine issue of material fact and that the record is sufficient to permit the Court to decide the summary judgment issues as a matter of law. Brief for Plaintiff (Document No. 23) at 6. After consideration of these motions, the responses thereto and the briefs and memoranda in support of and in opposition to said motions, this Court will deny Plaintiff's Motion to Compel Production of a Vaughn Index and for Sanctions, and will enter summary judgment requiring disclosure of some, but not all, of the withheld interview transcripts.

Motion to Compel Vaughn Index and for Sanctions

Oncology states that the Vaughn Index submitted by defendant NRC "mocks the Order of this Court" directing that a Vaughn Index be produced and "is wholly inadequate under prevailing case law," and that the NRC's "conclusory and generalized assertion of exemptions" "bears critically on Plaintiff's ability properly to argue its case for disclosure." Motion to Compel Vaughn Index, ¶¶ 18, 20-21. Oncology therefore moves this Court to direct the NRC to submit a detailed and

document-specific Vaughn Index. Although the Court agrees that the NRC has not submitted a true Vaughn Index, the Court also agrees with the NRC that, where an FOIA requester seeks records or information which has been compiled by the agency for ongoing law enforcement proceedings (as the transcripts of interviews conducted by the NRC's Incident Investigation Team plainly were) and the agency claims a "law enforcement" exemption, it need not submit a detailed Vaughn Index but may, instead, rely on affidavits and generic descriptions of categories of documents in its files and records and the likelihood that the release of documents within those categories could reasonably be expected to threaten enforcement proceedings (Exemption 7(A)) or could reasonably be expected to constitute an unwarranted invasion of privacy (Exemption 7(C)).[2] 5 U.S.C. § 522(b)(7)(A) and (C).

An excellent analysis of the inadvisability of requiring a Vaughn Index in the Exemption 7 context is set forth in Re Dep't. of Justice (Crancer), 999 F.2d 1302 (8th Cir. 1993)

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2. Exemption 7(A) and 7(C) as amended, now provide:

> (b) This section does not apply to matters that are --
>
> . . .
>
> (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, [or] . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy. . . .

5 U.S.C. § 522(b)(7)(A) and (C) (Supp. Pamphlet 1993).

("Crancer II"), analyzing, inter alia, United States Dep't of Justice v. Landano, ___ U.S. ___, 113 S. Ct. 2014 (1993); United States Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989) (Reporters Committee); NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214 (1978). The Eighth Circuit concluded that "the Supreme Court has consistently interpreted Exemption 7 of FOIA (specifically so far subsections 7(A), 7(C) and 7(D)), to permit the government to proceed on a categorical basis in order to justify nondisclosure under one of Exemption 7's subsections." Crancer II, 999 F.2d at 1308 (citations omitted). Based on the consistent Supreme Court interpretation of Exemption 7, the Eighth Circuit held:

> In sum, the government bears the burden of establishing that Exemption 7(A) applies. And under Robbins Tire, Exemption 7(A) does not require that the government produce a fact-specific, document-specific, Vaughn index in order to satisfy that burden. The contents of the requested documents are irrelevant. It is the particular categories of documents, and the likelihood that the release of documents within those categories could reasonably be expected to threaten enforcement proceedings, on which the court must focus. The district court, therefore, acted beyond the scope of its authority when it ordered the Department to produce a Vaughn Index.

Id. at 1309. See also John Doe Agency v. John Doe Corp., 493 U.S. 146, 152 (1989) (holding that Exemption 7 may be invoked to prevent the disclosure of documents not originally created for, but later gathered for, law enforcement purposes, and observing that, in determining whether the government has met its burden of proving that a compilation of records or information was done for such purposes, "a court must be mindful . . . that the FOIA was not intended to supplement or displace rules of discovery.

See Robbins Tire . . ."); Church of Scientology of California v. IRS, 792 F.2d 146, 152 (D.C. Cir. 1986) (Scalia, J.) (where claimed FOIA exemption consists of generic exclusion depending upon the category of records sought, such as where the subject of an investigation seeks disclosure of witness statements obtained in the agency investigation, a Vaughn index is "futile" and would "serve[] no purpose" because Exemption 7(A) does "not require a showing that each individual document would produce such interference [with enforcement proceedings], but could rather be applied generically to classes of records such as witness statements."); Wright v. OSHA, 822 F.2d 642, 646 (7th Cir. 1987) (Vaughn Index is generally not required under Exemption 7(A)).

Inasmuch as the Third Circuit has not addressed the need for or advisability of a detailed Vaughn Index where the government agency withholds documents pursuant to Exemption 7, this Court will adopt the solid reasoning of the Seventh, Eighth and District of Columbia Circuits set forth above, and will deny Oncology's motion to compel a Vaughn Index and for sanctions. Cf. Coastal States Gas Corp. v. DOE, 644 F.2d 969 (3d Cir. 1981).

Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure reads, in pertinent part, as follows:

> [Summary Judgment] shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and

> admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

In interpreting Rule 56(c), the United States Supreme Court has stated:

> The plain language . . . mandates entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to material fact, since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.

Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

An issue of material fact is genuine only if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The Court must view the facts in a light most favorable to the non-moving party and the burden of establishing that no genuine issue of material fact exists rests with the movant. Id., 477 U.S. at 242. The "existence of disputed issues of material fact should be ascertained by resolving 'all inferences, doubts and issues of credibility against the moving party.'" Ely v. Hall's Motor Transit Co., 590 F.2d 62, 66 (3d Cir. 1978), quoting Smith v. Pittsburgh Gage & Supply Co., 464 F.2d 870, 874 (3d Cir. 1972). Final credibility determinations on material issues cannot be made in the context of a motion for summary judgment, nor can the district court weigh the evidence. Josey v. Hollingsworth Corp., 996 F.2d 632 (3d Cir. 1993);

Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co., 998 F.2d 1224 (3d Cir. 1993).

When the non-moving party will bear the burden of proof at trial, the moving party's burden can be "discharged by 'showing' -- that is, pointing out to the District Court -- that there is an absence of evidence to support the non-moving party's case." Celotex, 477 U.S. at 325. If the moving party has carried this burden, the burden shifts to the non-moving party who cannot rest on the allegations of the pleadings and must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986); Petruzzi's IGA Supermarkets, 998 F.2d at 1230. When the non-moving party's evidence in opposition to a properly supported motion for summary judgment is "merely colorable" or "not significantly probative," the Court may grant summary judgment. Anderson, 477 U.S. at 249-50.

The district court must review de novo a government agency's withholding of documents against a proper FOIA request, and the burden is on the government to establish the applicability of an exemption. 5 U.S.C. § 522(a)(4)(B). The Court is satisfied from the submissions of the parties that there is no genuine issue of material fact, that the government has met its burden with respect to the withheld portions of A-1 and A-2, and initially with respect to B-1, that Oncology has met the burden then shifted to it to prove that, in fact,

disclosure of interview transcripts of 32 employees who have executed verified statements would not interfere with the law enforcement proceedings, and that summary judgment is warranted as a matter of law.

As the Eighth Circuit further held in Crancer II, while the district court ought not order a detailed Vaughn Index where the government invokes a 7(A) or 7(C) exemption, "it still must satisfy itself that the requested documents have been properly withheld." Crancer II, 999 F.2d at 1310. The government "must define functional categories of documents; it must conduct a document-by-document review to assign documents to proper categories; and it must explain to the court how the release of each category would interfere with law enforcement proceedings." Id. at 1309-10. (citations omitted). If the generic description is too vague or is insufficient on its face to sustain the claimed Exemption 7(A), the district court may request more specific, distinct categories clear enough to ascertain how each document, if disclosed, would interfere with the investigation. Id. Where categories remain too broad or too general, the district court may be required to examine the disputed documents in camera. Id.; Coastal States, 644 F.2d at 984-985. As a practical matter, it is often feasible for courts to make generic determinations about interference with law enforcement proceedings and, in many cases, affidavits will provide an adequate basis for making reasoned determinations. Manchester v. DEA, 823 F. Supp. 1259, 1269 (E.D. Pa. 1993), citing

Dickerson v. Dep't of Justice, 992 F.2d 1426, 1431 (6th Cir. 1993).

Documents A-1 and A-2 -- Portions of Transcribed Interviews with Two Individuals

The government's reliance on Exemption 7 requires a two-prong inquiry into (1) whether the requested documents were compiled for law enforcement purposes, and (2) whether release of the materials would have one of the six results specified in subsections (A) through (F). McDonnell v. United States, 4 F.3d 1227, 1255 (3d Cir. 1993), citing FBI v. Abramson, 456 U.S. 615, 622 (1982). Exemption 7(C) permits withholding of material compiled for law enforcement purposes to the extent production of such material "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 522(b)(7)(C).

There is no serious dispute that A-1 and A-2, transcripts of interviews with individuals who were not employees of Oncology, were compiled for law enforcement purposes.[3] On the record before the Court, there also is no doubt the second prong is satisfied with respect to A-1 and A-2.

"Interviewees and witnesses . . . have a substantial privacy interest because disclosure may result in embarrassment

3. Plaintiff's attempt to confine the scope of Exemption 7 to criminal proceedings flies in the face of the plain language of the exemption as well as the hundreds of published cases that uphold the government's nondisclosure under Exemption 7 in a myriad of administrative and civil "law enforcement proceedings."

and harassment." McDonnell, 4 F.3d at 1255. The categorical agency determination under Exemption 7(C) as to classes of documents whose production could reasonably be expected to constitute an unwarranted invasion of privacy has been endorsed by the Supreme Court. Reporters Committee, 489 U.S. at 780, cited in Crancer II, 999 F.2d at 1307-08. In Reporters Committee, the Court held that disclosure of a computerized compilation of an individual's criminal history could always be expected to constitute an invasion of the individual's privacy. Nevertheless, the Third Circuit has since directed its district courts in the Exemption 7(C) context to "conduct a de novo balancing, weighing the privacy interest and the extent to which it is invaded, on the one hand against the public benefit that would result from disclosure on the other." McDonnell, 4 F.3d at 1254, quoting Lame v. Dep't of Justice, 654 F.2d 917, 923 (3d Cir. 1981) ("Lame I").

This Court therefore has weighed the public interest in disclosure to Oncology, the party being investigated, of the withheld portions of unknown individuals' transcribed interviews gathered as part of an on-going law enforcement (NRC) proceeding and investigation, against the privacy interests of those individuals, as required by McDonnell and Lame I.[4]

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4. The public interest in maintaining the confidentiality of witness statements and investigative interviews during the pendency of a law enforcement investigation is itself expressed in and protected by Exemption 7(A), and is particularly strong where the requester is the suspect or target of the investigation, as is discussed below. The NRC (continued...)

The withheld portions of A-1 and A-2 consist of the names, addresses and other identifying information (such as familial relationships) of individuals mentioned in the interviews. Such information is categorically protected from disclosure in some circuits under Section 7(C) absent compelling circumstances not alleged to be present herein. E.g., SafeCard Serv. Inc. v. SEC, 926 F.2d 1197, 1205-06 (D.C. Cir. 1991) (Ginsburg, J.). Although our circuit has not endorsed this categorical approach to Exemption 7(C), the SafeCard rationale certainly weighs strongly in favor of the public's interest in nondisclosure of documents to the subject of an ongoing law enforcement proceeding, and this Court is confident that the balance of the public interests and the private interests of both the requester and the interviewees in items A-1 and A-2 favor non-disclosure.

The Court will enter summary judgment in favor of the NRC, therefore, as to portions of interview transcripts withheld under items A-1 and A-2 of Goverment Exhibit 4.

B-1 -- Approximately 5,000 Pages of Transcribed Interviews With Current or Former Oncology Employees

As set out fully above, the NRC claims that release of the 5,000 pages of transcript of interviews designated B-1 would reasonably be expected to interfere with law enforcement

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4. (...continued)
inexplicably did not claim Exemption 7(A) as to these portions of A-1 and A-2, however.

proceedings in several specific ways. Letts Affidavit, ¶ 9. Such categorical claims regarding documents compiled for law enforcement purposes, as were these transcribed interviews, ordinarily will suffice to meet the agency's burden and establish Exemption 7(A) entitling the agency to withhold such documents from disclosure. See, e.g. John Doe Agency, 493 U.S. at 153 ("In deciding whether Exemption 7 applies, moreover, a court must be mindful of this Court's observations that the FOIA was not intended to supplement or displace rules of discovery."); NLRB v. Robins Tire & Rubber Co., 437 U.S. at 239-43 (prehearing disclosure of witnesses' statements would involve the kind of harm that Congress believed would constitute an "interference" with NLRB Enforcement proceedings: that of giving a party litigant easier and greater access to the Board's case than he would otherwise have."); Crancer II, 999 F.2d at 1309-11 (collecting cases); Alyeska Pipeline Serv. Co. v. EPA, 856 F.2d 309 (D.C. Cir. 1988)(even without proof of actual witness intimidation or harassment, a suspected EPA violator could construct defenses which could permit violations to go unremedied if given early access to witness statements and other discovery); Spannaus v. United States Dept of Justice, 813 F.2d 1285, 1289 (4th Cir. 1987); Church of Scientology, 792 F.2d at 152-53 (collecting cases).

However, Oncology has submitted 32 verified statements executed between December 17 and December 23, 1993, of former and current employees of Oncology's facilities at six of its

cancer centers and its principal offices in State College, Pennsylvania. Additionally, an affidavit submitted by Ms. Marcy L. Colkitt, Oncology's general counsel, discloses that either general counsel or Oncology's outside counsel were present at the majority of the investigative interviews conducted by NRC, and in fact, represented both the interviewees and Oncology with the consent of each.

The verified statements indicate that Oncology's attorney was present at each interview and the employee/interviewee was aware of and consented to the dual representation. Further, each verified statement indicates: that the employee/interviewee was aware of his or her rights under the FOIA; that he or she consented to release of the transcript of the interview to counsel for Oncology which she or he did not expect to result in an unwarranted invasion of personal privacy; states that he or she has in no way been harassed by any employee or other representative of Oncology because of any involvement in the investigation by the NRC; and states that release to counsel of information about the signator on the verified statement that might be contained in transcripts of NRC's investigatory interviews with others would not reasonably be expected to result in an unwarranted invasion of the signator's personal privacy nor discourage his or her cooperation with the NRC investigation. Each verified statement is made "under penalty of perjury set forth in the Pennsylvania Crimes Code, 18 Pa.C.S.

§ 4904, that the foregoing is true and correct according to my best knowledge, information and belief."

Under the circumstances, the NRC can no longer maintain that release of the transcripts of the interviews with these 32 individuals "could reasonably be expected to interfere with enforcement proceedings." The affidavit and verified statements cut the underpinnings of the NRC's Exemption 7(A) claim out from under it with regard to those individuals. Indeed, as Oncology argues, it already knows most of what can be gleaned from those interviews by virtue of counsel's presence at the interviews.

Accordingly, the NRC cannot stand behind its categorical claim of exemption as to those portions of B-1 which consist of transcripts of interviews with 32 employee/interviewees who have consented to the release of their own transcripts, because the assumption upon which such generic claim of exemption is permitted is not valid as to these 32 interviewees. The verified statements and affidavit offered by Oncology are sufficient to negate the categorical inference that disclosure of transcribed notes of interviewees could reasonably be expected to interfere with the NRC's law enforcement proceeding. Summary judgment in Oncology's favor is appropriate, therefore, as to the transcribed interviews of the 32 former and current Oncology employees who executed the verified statements.

However, as to the remaining interviewees who have not executed verified statements, have not released their

transcripts to Oncology, have not disclaimed their privacy interests and have not otherwise negated the NRC's presumptively valid generic claim of Exemption 7(A) as to these witness statements prepared in the course of an ongoing law enforcement proceeding, summary judgment in the NRC's favor will be granted.

Lee, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ONCOLOGY SERVICES CORPORATION,	)	
Plaintiff,	)	
vs.	)	Civil Action No. 93-0939
UNITED STATES NUCLEAR REGULATORY COMMISSION and RUSSELL POWELL, FOIA OFFICER,	)	
Defendants.	)	

ORDER OF COURT

AND NOW, this 7th day of February, 1994, it is HEREBY ORDERED AS FOLLOWS:

1. Plaintiff's Motion to Compel Production of a Vaughn Index and for Sanctions (Document No. 24) is DENIED;

2. The defendant's Motion for Summary Judgment (Document No. 18) is GRANTED IN PART AND DENIED IN PART;

3. The plaintiff's Motion for Summary Judgment (Document No. 22) is GRANTED IN PART AND DENIED IN PART.

IT IS FURTHER ORDERED that summary judgment in plaintiff's favor is entered with regard to those portions of the B-1 disclosure of which is required as set forth in the memorandum opinion accompanying this Order, to-wit the transcripts of interviews with the 32 former or current employees of Oncology who have executed verified statements attached to plaintiff's motion for summary judgment; summary judgment is entered in defendant's favor with regard to Items A-1 and A-2 of the NRC's "Vaughn Index" (Government Exhibit 4) and

with regard to those portions of B-1 disclosure of which is not required as set forth in the memorandum opinion accompanying this Order.

Donald J. Lee
United States District Judge

cc Kerry A. Kearney, Esquire
Reed Smith Shaw and McClay
435 Sixth Avenue
Pittsburgh, PA 15219

Marcy L. Colkitt, Esquire
Oncology Services Corporation
P.O. Box 607
Indiana, PA 15701-0607

Michelle Gutzmer
Assistant United States Attorney

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

ONCOLOGY SERVICES CORPORATION,
HARRISBURG, PA
(Byproduct Material License
No. 37-28540-01 - EA 93-006)

Docket No.(s) 30-31765-EA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE (FRDW'G DOCUMENTS..) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
G. Paul Bollwerk, III, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Marian L. Zobler, Esq.
Michael H. Finkelstein, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Kerry A. Kearney, Esq.
Counsel for Oncology Services Corp.
Reed, Smith, Shaw & McClay
Mellon Square, 435 Sixth Avenue
Pittsburgh, PA 15219

Marcy L. Colkitt, Esq.
General Counsel & E. V. President
Oncology Services Corporation
110 Regent Court, Suite 100
State College, PA 16801

Dated at Rockville, Md. this
18 day of February 1994

Lois Cater
Office of the Secretary of the Commission